Filed 12/16/08 In re J.M CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.M., a Person Coming Under the Juvenile Court Law.	B202675 (Los Angeles County Super. Ct. No. YJ30436)
THE PEOPLE, Plaintiff and Respondent, v. J.M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Irma J. Brown, Judge. Affirmed as modified.

Nancy K. Undem, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters and David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

J.M. appeals from an order of wardship pursuant to Welfare and Institutions Code section 602 following the finding he committed second degree robbery (Pen. Code, § 211).[1] He was placed home on probation in the home of his mother, and a maximum term of confinement of five years was declared. He contends there was insufficient evidence to support the finding he committed a robbery because he was not an aider or abettor. Additionally, he asserts the court erred by setting a maximum term of confinement. For reasons stated in the opinion, we affirm the order of wardship but strike the maximum term of confinement.

FACTUAL AND PROCEDURAL SUMMARY

On May 8, 2007, at approximately 3:00 p.m., B.M. was in the area of Hawthorne and Rosecrans riding a bike home from school when co-minor M.A. approached and asked him where he was from. B.M. responded that he didn't "bang." M.A. stated, "yes, you do" and took B.M.'s backpack and "slammed it on the ground," causing B.M. to fall off his bike. As B.M. fell, co-minor S.H. "hopped" on B.M.'s bike and rode off. A couple of seconds later, appellant and M.A. approached B.M. while he was still on the ground and kicked and punched him approximately ten or eleven times. Police approached and appellant and M.A. ran.

The testimony of appellant, M.A. and S.H. contradicted that of B.M. Appellant testified B.M. rode up to him on a bike and punched him in the face. Appellant and B.M. got into a fight, and B.M. ran away but returned shortly to retrieve his bike. Appellant told B.M. he did not have it.

In finding sufficient evidence to sustain count 1 of the petition, the court stated in essence it believed the testimony of victim B.M. but not the testimony of appellant and his companions.

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[1] The court found a second allegation that appellant committed an assault with a deadly weapon or force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)) to be not true.

DISCUSSION

I

Appellant contends there was insufficient evidence that he knew the criminal purpose of S.H. or that appellant had the intent or purpose of either committing, encouraging or facilitating the crime.

"'The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]' [Citation.] In considering the sufficiency of the evidence in a juvenile proceeding, the appellate court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence – such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. We must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence [citation] and we must make all reasonable inferences that support the finding of the juvenile court. [Citation.]' [Citations.]" (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089.) "This standard applies to cases based on circumstantial evidence. [Citation.]" (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.)

"'Although it is the duty of the [finder of fact] to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the [finder of fact], not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. "'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.'" [Citations.] "Circumstantial evidence may be sufficient to connect a defendant with the crime and to prove his guilt beyond a reasonable doubt." [Citation.]' [Citations.]" (*People v. Figueroa* (1992) 2 Cal.App.4th 1584, 1587.)

"Robbery is defined as the taking of personal property of some value, however slight, from a person or the person's immediate presence by means of force or fear, with the intent to permanently deprive the person of the property. [Citations.] To support a

robbery conviction, the evidence must show that the requisite intent to steal arose either before or during the commission of the act of force. [Citation.]" (*People v. Marshall* (1997) 15 Cal.4th 1, 34.) A robbery is not complete until the robber reaches a place of temporary safety. (*People v. Ramirez* (1995) 39 Cal.App.4th 1369, 1374.)

"[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense[;] (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime." (*People v. Beeman* (1984) 35 Cal.3d 547, 561; accord, *People v. Williams* (2008) 43 Cal.4th 584, 637.) "Whether a person has aided and abetted in the commission of a crime is a question of fact, and on appeal all conflicts in the evidence and attendant reasonable inferences are resolved in favor of the judgment. Among the factors which may be considered in determining aiding and abetting are: presence at the crime scene, companionship, and conduct before and after the offense. [Footnotes omitted.]" (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5.)

Viewing the evidence in the light most favorable to the order, substantial evidence supports the finding that appellant aided and abetted the robbery. After B.M. was pulled off his bike and to the ground, appellant's companion S.H. hopped on the bike and rode away. Appellant and M.A. aided in the robbery by keeping B.M. on the ground, kicking and punching him, and preventing him from doing anything to keep the bike from being taken. Appellant's argument that his testimony and that of his companions does not support the finding that appellant aided and abetted the robbery is a request that we reweigh the evidence, which we do not do. (*In re Juan G., supra*, 112 Cal.App.4th at p. 6.)

II

Appellant contends the juvenile court erred by setting a maximum term of confinement in that he was not removed from the physical custody of his parent. His contention is well taken.

Welfare and Institutions Code section 726, subdivision (c) provides, "If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to [Welfare and Institutions Code] Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court."

By its express terms, Welfare and Institutions Code section 726, subdivision (c) applies only if a minor is removed from the physical custody of his or her parent or guardian. Appellant was not removed from the physical custody of his parent, there was no confinement, and the court's order setting a maximum term of confinement is erroneous. (*In re Ali A.* (2006) 139 Cal.App.4th 569, 573.) The maximum term of confinement must be stricken.

DISPOSITION

The theoretical maximum period of confinement is stricken and in all other respects the order of wardship is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.